Court No. 2

Writ Petition No. 235 (M/B) of 2003

M/s Arpit Steel (P) Ltd. and one another..... Petitioners.

Vs.

Uttaranchal Power Corporation Ltd.
And Others ..... Respondents.

.....

Writ Petition No. 910 (M/B) of 2002

M/S Arpit Steel (P) Ltd. and one another..... Petitioners.

Vs.

Uttaranchal Power Corporation Ltd.
And others ..... Respondents.

Hon. P.C. Verma, A.C.J.
Hon, Irshad Hussain, J.

Heard Sri A.R. Masoodi, learned counsel for the petitioners, Sri B.D. Upadhayaya, learned counsel for the respondents no.1 and 2 and Sri Ranjit Saxena, learned counsel for the respondents nos. 3 and 4.

This is second writ petition filed after the first writ petition no. 910 of 2002. It is contended by the learned counsel for the respondents that the same is liable to be dismissed under Rule 7 Chapter 22 of the High Court Rules. Learned counsel for the petitioner has contended that this writ petition is not the second writ petition. He submitted that in writ petition no. 910 of 2002, the petitioner did not dispute the liability of payment of Rs.54,00,000/- approximately. He simply has prayed for the facility of instalments , while in writ petition no. 235 of 2003(M/B), he has disputed the liability of payment of Rs. 90,00,000/-. The liability in the writ petition no. 235/03 pertains to the period commencing from June 1999 to 2000 and liability in writ petition no. 910 of 2002 pertains to the period July 2002 to October, 2002.

From these facts it is clear that the writ petition no. 910 of 2002 was filed after the demand notice issued to the petitioner to deposit the entire arrears of electricity dues. The petitioner did not include the amount of Rs.90, 00,000/- which has been disputed in the second writ petition, in the first writ petition. Therefore, now he is debarred to raise the dispute with regard to Rs. 90,00,000/- in the second writ petition in view of the principle of constructive res judicata.

It is settled law that the provisions of Code of Civil Procedure will not be applicable as such, but the principle of constructive res judicata may be made applicable to writ petition.

Learned counsel for the petitioner has drawn our attention to the order dated 12.3.2003 passed by the Division Bench of Allahabad High Court (Lucknow Bench) in writ petition no. 5528 of 2002 which reads as under"

> "The learned Advocate Mr. A.R. Masoodi, appearing on behalf of the petitioner submits, on instruction, that this writ application itself shall not be proceeded with. That being the position, there is no need to recall the order dated 12.9.2002 and we dispose of the writ application as not pressed. There will be no order as to costs. This order shall not prevent the petitioner from taking any appropriate steps before any appropriate forum, in accordance with law."

From the perusal of the aforesaid order, it is clear that the petitioner has not been granted liberty to file fresh writ petitioner either in the High Court of U.P. at Allahabad or High Court of Uttaranchal at Nainital. But, the petitioner has been relegated to avail appropriate remedy before the appropriate forum. The Forum of appeal is available to the petitioner as provided under Regulation 23 of the U.P. Electricity Supply (Consumers) Regulations, 1984 , which is applicable by virtue of the provisions of U.P. Reorganisation Act, 2000 as well, Therefore, it is open for the petitioner to avail the appropriate remedy of appeal according to law.

The Appellate Authority is directed to decide the appeal within fifteen days from the date of production of the certified copy of this order.

Meanwhile, the petitioner is directed to deposit a sum of Rs.20,00,000/-(Twenty Lakhs only) with the respondents within a period of fifteen days from the date of the production of the certified copy of this order, in addition to the deposit if already made, and the connection shall be restored on deposit thereof. The entire arrears of electricity dues shall be deposited according to the rescheduling of the instalments by the Uttaranchal Power Corporation within 15 days from today. In view of this order, learned counsel for the petitioner does not wish to press writ petition no. 910 of 2002. The same is also dismissed as not pressed.

Subject to the above, both the petitions are dismissed.

Dt. 5.4.2003

A